

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
THOMAS M. MOROUGHAN,

Docket # 12 CV 512
(JFB) (AKT)

Plaintiff,

-against-

THE COUNTY OF SUFFOLK, SUFFOLK COUNTY
POLICE DEPARTMENT, SUFFOLK DETECTIVES
RONALD TAVARES, CHARLES LESER, EUGENE
GEISSINGER, NICHOLAS FAVATTA, and ALFRED
CICCOTTO, DETECTIVE/SGT. WILLIAM J. LAMB,
SGT. JACK SMITHERS, SUFFOLK POLICE
OFFICERS WILLIAM MEANEY, and JESUS FAYA and
SUFFOLK JOHN DOES 1-10, THE COUNTY OF
NASSAU, NASSAU COUNTY POLICE
DEPARTMENT, SGT. TIMOTHY MARINACI,
DEPUTY CHIEF OF PATROL JOHN HUNTER,
INSPECTOR EDMUND HORACE, COMMANDING
OFFICER DANIEL FLANAGAN, DETECTIVE/SGT.
JOHN DeMARTINIS, NASSAU POLICE OFFICERS
ANTHONY D. DILEONARDO, POLICE OFFICER
EDWARD BIENZ and JOHN DOES 11-20,

**REPLY DECLARATION
IN SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT**

Defendants.
-----X

Christopher Delamere Clarke, an attorney duly admitted to practice in the United States District Court for the Eastern District of New York declares, pursuant to 28 U.S.C. § 1746 that the following is true and correct under the penalty of perjury, as follows:

1. The undersigned is a member of the law firm of Leahey & Johnson, P.C., and hereby represents Defendants County of Nassau, Nassau County Police Department, Sgt. Timothy Marinaci, Inspector Edmund Horace, Commanding Officer Daniel Flanagan, Detective/Sgt. John DeMartinis and Police Officer Edward Bienz (collectively "Movants") in the above captioned matter, and as such, is fully familiar with the facts and circumstances set forth herein.

2. This Reply Declaration and attached exhibit is being submitted in further support of Movants' motion for summary judgment pursuant to Fed. R. Civ. P. 56.

3. Attached hereto as **Exhibit BB** is a true copy of pages 44, 111-114, 185-192, 207-208 of deposition testimony of Suffolk County Assistant District Attorney Rafael Pearl taken on December 15, 2016 and February 17, 2017.

Dated: New York, New York
July 11, 2019

Yours, etc.,

LEAHEY & JOHNSON, P.C.
Attorneys for Defendants
THE COUNTY OF NASSAU, NASSAU
COUNTY POLICE DEPARTMENT, SGT.
TIMOTHY MARINACI, INSPECTOR EDMUND
HORACE, COMMANDING OFFICER DANIEL
FLANAGAN, DETECTIVE SGT. JOHN
DEMARTINIS AND POLICE OFFICER
EDWARD BIENZ
120 Wall Street, Suite 2220
New York, New York 10005
(212) 269-7308

BY: Christopher Delamere Clarke

CHRISTOPHER DELAMERE CLARKE

To all parties and the Court via ECF

EXHIBIT BB



1

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 THOMAS M. MOROUGHAN,

5 Plaintiff,

6 Docket No.
7 12-CV-0512

8 -against-

9 THE COUNTY OF SUFFOLK, SUFFOLK COUNTY POLICE
10 DEPARTMENT, SUFFOLK DETECTIVES RONALD
11 TAVARES, CHARLES LESER, EUGENE GEISSINGER,
12 NICHOLAS FAVATTA, and ALFRED CICCOTTO,
13 DETECTIVE/SGT. WILLIAM J. LAMB, SGT. JACK
14 SMITHERS, SUFFOLK POLICE OFFICERS WILLIAM
15 MEANEY, JESUS FAYA and SUFFOLK JOHN DOES
16 1-10, THE COUNTY OF NASSAU, NASSAU COUNTY
17 POLICE DEPARTMENT, SGT. TIMOTHY MARINACI,
18 DEPUTY CHIEF OF PATROL JOHN HUNTER,
19 INSPECTOR EDMUND HORACE, COMMANDING OFFICER
20 DANIEL FLANAGAN, DETECTIVE/SGT. JOHN
21 DEMARTINIS, NASSAU POLICE OFFICERS ANTHONY
22 D. DILEONARDO, EDWARD BIENZ and JOHN DOES
23 11-20,

24 Defendants.

25 -----x
100 Veterans Highway
Hauppauge, New York

December 15, 2016
9:20 a.m.

(CAPTION CONTINUED ON NEXT PAGE.)

Rich Moffett Court Reporting, Inc.
114 Old Country Road, Suite 630
Mineola, New York 11501
516-280-4664

Raphael Pearl

44

familiar with him personally.

Q Do you know for whom he works within the Suffolk County Police Department?

A No.

Q Next.

A Suffolk Police Officer Meaney, I'm not familiar with. Jesus Favatta, not familiar with. Says next, Suffolk John Does 1 through 10. Want me to keep going, County of Nassau?

Q Yes.

A Sergeant Timothy Marinaci, I do not know. Deputy Chief of Patrol John Hunter, I don't know. Inspector Edmund Horace, I don't know. Commanding Officer Daniel Flanagan, do not know. Detective Sergeant John DeMartinis, do not know. Police officers Anthony DiLeonardo, Ed Bienz and John Does. Obviously, I only know DiLeonardo and Mr. Bienz from my work on this case.

Q During the course of your career with the Suffolk County District Attorney's Office, did you ever meet a Deputy Inspector

1 Raphael Pearl 111

2 Q We are trying to address this by
3 category. So that may be easier. Do you
4 have any idea of the actual date that the
5 DA's office took over your investigation?

6 A No.

7 Q I will show you what has been
8 previously marked as Plaintiff's Exhibit 25,
9 page number 1. It's an IAB summary from the
10 Nassau County Police Department. IAU number
11 is 27-2011.

12 MR. SCHROEDER: What is the page
13 number, Tony?

14 MR. GRANDINETTE: Page number 1.

15 Q Have you ever seen the Nassau
16 County Internal Affairs Unit report in the
17 case?

18 A No.

19 Q You are not familiar with what
20 I'm about to show you. I will ask you if
21 you want to take a look at what I marked
22 with a star?

23 MR. MITCHELL: Just ask does
24 that refresh his recollection about
25 the date instead of going through the

1 Raphael Pearl 112

2 14 different layers because it might
3 or might or might not.

4 MR. GRANDINETTE: Off the
5 record.

6 (Discussion off the record.)

7 Q Mr. Pearl, back on the record.
8 Looking at what has been previously marked
9 as Plaintiff's Exhibit 25, page 1, does that
10 refresh your recollection as to the date
11 that the DA's office assumed responsibility
12 for the investigation of this shooting?

13 A No.

14 MR. MITCHELL: Objection to
15 form. You can answer.

16 Q Okay. Although it doesn't
17 refresh your recollection, you do recognize
18 that according to at least the Nassau County
19 IAU report it says that on March 4, 2011 the
20 Suffolk County District Attorney's Office
21 informed the Suffolk County Police
22 Department that they were taking over the
23 investigation and the Suffolk County
24 Homicide Bureau was directed to stop
25 investigating the incident?

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Raphael Pearl

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MR. SCHROEDER: Objection to
form.

MR. MITCHELL: Objection to
form. I stipulate the document speaks
for itself.

Q That is what was said?

A Yes.

Q Is your knowledge of the case
consistent with that statement?

MR. MITCHELL: Objection to
form. You can answer.

A Sure. The date?

Q It's consistent with --

A It's consistent with March 4th.
It could be around March 4th. Not that
whole sentence.

Q On or about March 4th your
office took over the investigation of the
case?

A Yes.

Q To your knowledge, was the
Suffolk County Homicide Squad directed to
stop investigating the case?

A I don't know that.

Raphael Pearl

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Q Did you ever communicate with the Nassau County Internal Affairs Unit about their case?

A No.

Q Do you know if anyone or who, if anyone, from your office did communicate with Nassau County Internal Affairs?

MR. MITCHELL: Objection to form.

A No. I don't know if anyone from the office other than -- I won't speculate, but Tony Palumbo might have spoken to the Nassau County IAB.

Q You have no personal knowledge whether any member of the Suffolk IAD's Office spoke with the Nassau County Internal Affairs Unit?

A No.

MR. SCHROEDER: That's correct?

THE WITNESS: That's correct, sorry.

Q I show you what has been marked Plaintiff's Exhibit 146. The first question

I want to ask you is do you recognize

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Raphael Pearl

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form.

A Yes.

Q But she didn't tell you whether
or not she ever communicated with him?

A Not that I recall.

Q Or whether he interfered with
her ability to communicate with him?

A I don't recall that. I don't
recall her saying anyone interfered with her
treating other than all the people in the
hospital were making it difficult to do her
work.

Q Was the other individual Ed
Bienz that he was with? Was DiLeonardo with
Officer Bienz?

A No, it wasn't him.

Q What else did she tell you
happened?

A She spoke to Mr. DiLeonardo,
spoke to Mr. Bienz. She spoke to
Mr. Moroughan. She treated Mr. Moroughan.
I believe she also indicated that the
detectives wanted to speak to all the
parties included Mr. Moroughan in the

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Raphael Pearl

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A No.

Q Were you present when
Mr. Moroughan was arrested?

A No.

Q Who told you Officer DiLeonardo
arrested Mr. Moroughan?

A Sergeant Lamb.

Q Did Officer DiLeonardo put
handcuffs on Mr. DiLeonardo?

A I don't know.

Q Did he take him into custody in
any way?

A No.

Q Where did Mr. DiLeonardo
allegedly arrest Mr. Moroughan? Where did
he do that?

A I don't know.

Q Did he do that in the hospital?

A Assume so, but I don't know.

Q Was Mr. DiLeonardo a Suffolk
County Police Officer?

A No.

Q Was he a Town of Huntington
Police Officer?

1 Raphael Pearl 187

2 A No.

3 Q Or Village of Huntington Police
4 Officer?

5 A No.

6 Q Was he on the Suffolk County
7 payroll?

8 A Not that I'm aware.

9 Q When he allegedly made this
10 arrest, was he acting on behalf of the
11 Suffolk County Police?

12 A No.

13 Q Was he acting on behalf of
14 Nassau County Police?

15 A I don't know the answer to that.

16 Q When did Officer Lamb or
17 Detective Lamb tell you that DiLeonardo
18 arrested Moroughan?

19 A It would have been during the
20 phone call that early morning hours, late at
21 night, whatever date that was.

22 Q Did you make any memorandum or
23 notation about that particular fact, that
24 particular phone call where he allegedly
25 said that DiLeonardo arrested him?

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Raphael Pearl

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A No.

Q Did you ask him any questions to follow up on that?

A Yes.

Q What did you ask Detective Lamb?

A How that process was working in conjunction with who was handling the arrest, who was handling the shooting. There was a time where there was a discussion of what unit in the Suffolk County Police Department was handling what aspect of the case.

Q Did Officer DiLeonardo fill out any of the Suffolk County paperwork required to formalize the arrest?

MR. MITCHELL: Objection to form. You can answer.

A If you mean the felony complaint, I don't believe so.

Q Whatever paperwork was required, this arrest was filled out by Suffolk County Police Officers, right?

MR. MITCHELL: Objection to form. You can answer.

1 Raphael Pearl 189

2 A There may have been a supporting
3 deposition.

4 Q That was provided by Officer
5 DiLeonardo?

6 A Yes, but I have to look at the
7 charges.

8 Q There was a statement taken by
9 Moroughan himself, correct?

10 A Sorry?

11 Q There was a statement taken by
12 Mr. Moroughan himself, correct?

13 MR. GRANDINETTE: Objection to
14 form.

15 MR. MITCHELL: You mean taken
16 of?

17 A Yes, there's a statement taken
18 of Mr. Moroughan.

19 Q That was signed by Mr.
20 Moroughan, correct?

21 A As I recall, yes.

22 Q Initialed in various places by
23 him as well, correct?

24 A Yes.

25 Q Who took that statement from

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Raphael Pearl

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him? Was it Officer DiLeonardo?

A No.

Q Was it Suffolk County Police
Officers, correct?

A Yes.

Q Did Mr. Moroughan know he was
under arrest when he gave that statement?

A Yes.

Q Was he in handcuffs when he gave
that statement?

A That I don't know.

Q Who told Mr. Moroughan he was
under arrest when he gave that statement?
Do you know?

A I don't know which detective.

Q When you say that he knew he was
under arrest at that time, what is that
based upon?

MR. MITCHELL: Objection to
form. You can answer.

A I believe he was Mirandized
before he gave the statement.

Q Did Officer DiLeonardo Mirandize
him?

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Raphael Pearl

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A Not that I believe.

Q Did Detective Lamb Mirandize him?

A I don't know Sergeant Lamb, Detective Lesser. Team 2 member.

Q Would you believe it was a Suffolk County Police Officer or Detective that Mirandized Mr. DiLeonardo?

A Yes.

Q Certainly Mr. Bienz had nothing to do with the arrest?

A No.

MR. MITCHELL: I didn't hear the question before that. Not the one you just asked.

Q Did Officer Bienz have anything to do with the alleged arrest?

A Yes.

Q He arrested him?

A Yes.

Q Did Officer Bienz arrest Mr. Moroughan?

A Sorry, Bienz. Thinking DiLeonardo. Say that again.

1 Raphael Pearl 192

2 Q Did Officer Bienz arrest
3 Mr. DiLeonardo?

4 A No.

5 Q Did Officer Bienz shoot
6 Mr. Mr. Moroughan?

7 A No.

8 Q I will start again. Did Officer
9 Bienz arrest Mr. Moroughan?

10 A No.

11 Q Did Officer Bienz shoot
12 Mr. Moroughan?

13 A No.

14 Q Did Officer Bienz assault
15 Mr. Moroughan?

16 A No.

17 Q Was Officer Bienz run over by
18 Mr. Moroughan?

19 MR. GRANDINETTE: Objection to
20 form.

21 A But for the way you describe it
22 run over, yes.

23 Q Am I correct that Mr. Moroughan
24 was ultimately taken into custody and put
25 into handcuffs while sitting in an office in

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, MARIA PELLICANE, a Notary
Public within and for the State of New
York, do hereby certify:

That RAPHAEL PEARL, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 31st day of
December, 2016.



MARIA PELLICANE

Raphael Pearl

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A C K N O W L E D G M E N T

STATE OF NEW YORK)
 : ss
COUNTY OF)

I, RAPHAEL PEARL, hereby certify
that I have read the transcript of my
testimony taken under oath in my deposition
of December 15, 2016; that the transcript is
a true, complete and correct record of my
testimony, and that the answers on the
record as given by me are true and correct.

RAPHAEL PEARL

Signed and subscribed to before
me, this day
of , 2016.

Notary Public, State of New York



COPY

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
THOMAS M. MOROUGHAN,

Plaintiff,

Docket No.
12-CV-0512

-against-

THE COUNTY OF SUFFOLK, SUFFOLK COUNTY POLICE
DEPARTMENT, SUFFOLK DETECTIVES RONALD
TAVARES, CHARLES LESER, EUGENE GEISSINGER,
NICHOLAS FAVATTA, and ALFRED CICCOTTO,
DETECTIVE/SGT. WILLIAM J. LAMB, SGT. JACK
SMITHERS, SUFFOLK POLICE OFFICERS WILLIAM
MEANEY, JESUS FAYA and SUFFOLK JOHN DOES
1-10, THE COUNTY OF NASSAU, NASSAU COUNTY
POLICE DEPARTMENT, SGT. TIMOTHY MARINACI,
DEPUTY CHIEF OF PATROL JOHN HUNTER,
INSPECTOR EDMUND HORACE, COMMANDING OFFICER
DANIEL FLANAGAN, DETECTIVE/SGT. JOHN
DEMARTINIS, NASSAU POLICE OFFICERS ANTHONY
D. DILEONARDO, EDWARD BIENZ and JOHN DOES
11-20,

Defendants.

-----x
100 Veterans Highway
Hauppauge, New York

February 17, 2017
10:30 a.m.

(CAPTION CONTINUED ON NEXT PAGE.)

Rich Moffett Court Reporting, Inc.
114 Old Country Road, Suite 630
Mineola, New York 11501
516-280-4664

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Raphael Pearl

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A That would sound consistent.

Q Whether or not he consented, do you know whether or not the hospital ever did those tests?

A Just can't recall.

Q You looked at the copy of the hospital record that was shown to you this morning by Mr. Grandinette. Did you see any toxicology screening of Mr. Bienz that night?

A No, I did not.

Q Did you consult with anyone with the Nassau County District Attorney's office before deciding to dismiss the charges against Mr. Moroughan?

A I did not.

Q Did you consult with anyone from the Nassau County Police Department before deciding to dismiss the charges against Mr. Moroughan?

A I did not.

Q Did you consult with Officer DiLeonardo before deciding to dismiss the charges against Mr. Moroughan?

1 Raphael Pearl 208

2 A No.

3 Q Do you know if District Attorney
4 Spota consulted with anyone at Nassau County
5 directing that the charges be dismissed?

6 A I don't know.

7 Q That was done independent of
8 Nassau County, correct?

9 MR. MITCHELL: Objection to
10 form. You can answer.

11 A I don't know. I didn't have any
12 contact with Nassau County.

13 Q Looking at the felony complaint,
14 this is Bates stamped 181. There's a check
15 indicating that the arrest is based upon a
16 statement given by Officer DiLeonardo,
17 correct?

18 A Yes, discharged based solely on
19 the information and belief of the statement
20 of Anthony DiLeonardo.

21 Q Anthony DiLeonardo here is
22 identified as a police officer, correct?

23 A Correct.

24 Q That number next to the name, do
25 you know what that number refers to?

Raphael Pearl

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A C K N O W L E D G M E N T

STATE OF NEW YORK)
 : ss
COUNTY OF)

I, RAPHAEL PEARL, hereby certify
that I have read the transcript of my
testimony taken under oath in my deposition
of February 17, 2016; that the transcript is
a true, complete and correct record of my
testimony, and that the answers on the
record as given by me are true and correct.

RAPHAEL PEARL

Signed and subscribed to before
me, this day
of , 2017.

Notary Public, State of New York

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, MARIA PELLICANE, a Notary
Public within and for the State of New
York, do hereby certify:

That RAPHAEL PEARL, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 6th day of
March, 2017.



MARIA PELLICANE